



2. On April 10, 2015, the agency conducted an interview with the Petitioner. She stated that she is currently living with her brother but that she and her child would be moving out during the upcoming weekend. She did not know her new address and stated that she would provide a copy of her new lease agreement. The information was due to the agency by April 21, 2015. Petitioner had not provided an update to her address as required by May 18, 2015.
3. On May 18, 2015, the agency issued a Child Care Client Overpayment Notice to the Petitioner at an address on [REDACTED], WI informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$4,644.91 for the period of December 1, 2013 – August 31, 2014 due to client error in misrepresenting or failing to accurately report household composition. The notice also informed the Petitioner of the right to appeal the agency's determination by filing a request for a hearing within 45 days with the Division of Hearings and Appeals.
4. On May 31, 2015, the Petitioner's benefits case closed due to failure to verify information as requested. On June 25, 2015, the Petitioner re-applied for BC+, FoodShare and child care benefits. She reported an address on [REDACTED], WI.
5. On July 2, 2015, the agency conducted a phone interview with the Petitioner. On July 2, 2015, the agency issued a dunning notice to the Petitioner at the Willow Ridge address.
6. On August 4, 2015 and September 2, 2015, the agency issued dunning notices to the Petitioner at an address on [REDACTED], WI.
7. On October 16, 2015, the agency issued a notice to the Petitioner at her address on [REDACTED], WI that it may intercept her tax refunds due to an unpaid public assistance debt in the amount of \$4,644.91. The notice also informed her of the right to appeal this determination by filing a request for a hearing with the Division of Hearings and Appeals within 30 days of the date of the notice. The notice further informed her that she does not have a right to a hearing on any issue for which she had a prior right to a hearing.
8. On January 28, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

An administrative law judge (ALJ) can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the effective date of the negative action, WI Stat § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application or payment of Child Care Benefits or the finding of an overpayment of that benefit. An appeal of a tax intercept action must be filed within 30 days. WI Stat. § 49.85.

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of Medical Assistance and child care payments made incorrectly.

The department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state an income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. See Wis. Stat. § 49.85(3).

There are two problems with petitioner's appeal. First, she did not file it within 30 days of the tax intercept notice. Her appeal was filed more than three months after the notice.

Second, the hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Petitioner appeals the overpayment of child care benefits as well as the agency's intent to intercept her income tax refund. The Petitioner testified that she did not receive the child care overpayment notice because it was mailed to her brother's address and her brother did not give her the notice. The Petitioner further claims that she did not receive the dunning notices or the tax intercept notice.

I do not find merit in the Petitioner's claims that she did not receive the notices or was not aware of the overpayment. The agency is required to send information to the last-known or reported address of an individual. In this case, the agency correctly mailed the overpayment notice to the last-reported address (Petitioner's brother's address) after the Petitioner failed in April and May, 2015 to comply with the requirement to verify her new address within 10 days. Further, the agency correctly mailed the first dunning notice to the Petitioner at her brother's address because her new address was not verified until later that day. The agency correctly mailed the second and third dunning notices to the Petitioner's current address. The agency correctly mailed the tax intercept notice to the Petitioner's current address. None of the notices issued to the Petitioner were returned as undeliverable. The Petitioner's claim that she did not receive these notices because her brother had them is not credible because two of the dunning notices and the tax intercept were mailed to her current address, not to her brother's address. The overpayment and first dunning notice were correctly mailed to the Petitioner's last-known address of record.

The Petitioner's appeal of the overpayment action was filed more than 8 months after the action. Therefore, with regard to the overpayment action, the Petitioner's appeal is untimely and DHA does not have jurisdiction to hear that case on the merits.

I further conclude that the appeal regarding the tax intercept action is untimely and I do not have jurisdiction to hear that case on the merits. In addition, the Petitioner had a prior right to a hearing on the overpayment. Therefore, there is no issue over which DHA has jurisdiction related to the overpayment or tax intercept actions against the Petitioner.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of May, 2016

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 24, 2016.

Washington County Department of Social Services  
Public Assistance Collection Unit